

The DNR also allows Field Trial Organizations to use tractors and possibly other equipment purchased with Federal Aid funds.



**The DNR provides Field Trial Clubhouses for exclusive use by Field Trial Organizations and their members. Many of the field trial participants who were using the clubhouse at Glendale Fish and Wildlife Area were out of state residents.**

The fee for a field trial permit to conduct a field trial and have use of a Fish and Wildlife Area by up to 300 participants, 200 dogs, 100 horses, and associated vehicles and equipment for up to ten days is \$10. By contrast, a resident hunting license is \$8.75, a game bird habitat stamp is \$6.75, a deer hunting license is \$13.75, and a turkey hunting license is \$14.75 (based on 1999-2000 hunting regulations). Thus the cost for a state resident to hunt a variety of game species in the same areas utilized by field trials would be

\$44.00. At Glendale, where the vast majority of field trialers at the All America Quail Championships were from out-of-state, a comparison to a non-resident hunter would be more appropriate. A non-resident hunter who wanted to hunt a variety of species in the same areas utilized by field trials would pay \$60.75 for a non-resident hunting license, \$6.75 for a game bird habitat stamp, \$120.75 for a non-resident deer hunting license, and \$114.75 for a non-resident turkey hunting license (based on 1999-2000 hunting regulations). Total cost for a non-resident hunter would be \$303. By contrast, non-resident field trial participants are exempt from buying any kind of hunting license. The permit fee for field trials is only \$10.00, so if actual costs were passed through to 300 participants it would cost a non-resident only \$0.03 to use a Fish and Wildlife Area for field trialing but would cost the non-resident hunter \$303.00. The non-resident hunter is being charged 10,100 times more to use an area than is the non-resident field trial participant and the resident hunter is being charged 1467 times more than the non-resident field trial participant. This is clear preferential treatment to field trial participants, especially considering the areas are purchased, developed, and managed with hunting license monies and Federal Aid excise tax monies paid by hunters.

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In addition, we learned in response to our interview questions that the DNR Commission has established a \$50 per day building rental fee for the clubhouse, horse barn, and other buildings. However, we also learned that in actual practice the Field Trial Clubs are only charged \$50 per field trial rather than \$50 per day. For a two week field trial, this is a difference between \$700 and \$50. These funds could have historically been used to defray the State maintenance costs for the buildings constructed or acquired with hunting license money or state tax money to which field trial participants have enjoyed exclusive use.

Thus, in regard to the above finding, the Fish and Wildlife Service and the State are not in compliance with Sections 1 and 2 of the Wildlife Restoration Act, 50CFR80.5, 50CFR80.13, 50CFR80.14, 50CFR80.18, 521FW1.6, and 521FW1.7(C) & (G), and legal grant documents.

**Finding 7.** The DNR is providing services of material value to Field Trial Organizations and their members for commercial purposes and benefit at Fish and Wildlife Areas in Indiana that have been purchased, developed, and /or managed with Federal Aid funds.

The field trial observed at Glendale was primarily a commercial event for professionals. Events of this type charge substantial entry fees for each dog and award prize money for the trainer of the winning dog and often the runner-up dog. According to a professional

trainer participating at the field trial, winning a National field trial championship, such as was observed at Glendale, markedly increases the value of the winning dog and the value of their off-spring. Championship dogs can reportedly be worth up to \$40,000 to \$50,000 and a one year old off-spring with promise from championship stock can reportedly be worth up to \$20,000 to \$25,000. These professionals compete in a National circuit and travel from state to state to do so. This is a highly organized, competitive, and commercial endeavor including commercial advertising for related products. The practice of providing services of material value for the commercial benefit of a special interest group is outside the purpose of the Federal Aid Program.

Thus, in regard to the above finding, for the field trial observed at Glendale and other like commercial events, the Fish and Wildlife Service and the State are not in compliance with Sections 1 and 2 of the Wildlife Restoration Act, 50CFR80.5, 50CFR80.13, 50CFR80.14, 50CFR80.18, 521FW1.6, and 521FW1.7(C) & (G), and legal grant documents.

In contrast to Glendale, the hunt test at Winamac appeared to be an amateur trial where hunters were working with their dogs to enhance the tradition and quality of the hunting experience and to reduce the incidence of downed but unretrieved game. The purpose appeared to be individual dogs passing from one level of certification to a higher level. The dogs were being compared to a standard and were not in competition with each other. Participants appeared to be residents from the local or regional area, not professional dog trainers and handlers from out-of-state competing on a national circuit. This did not appear to be a professional event. People were at the trial with their personal hunting dog rather than professional trainers with an entire string of dogs from the owners kennel. This trial appeared to be about training hunting dogs rather than a highly competitive event that included a large financial incentive for dog trainers and owners. The field trial at Winamac did not have the appearance of a large commercial trial event.

**Finding 8.**

Field trials have become a major and dominant use at a few Fish and Wildlife Areas in Indiana that were acquired, developed, and /or are managed with Federal Aid funds. However, submission and approval of specific field trial plans that describe the proposed field trials and their inter-relationship to the existing federal aid project(s) has never occurred. Nor has compliance with the National Environmental Policy Act or other ancillary compliance requirements been achieved regarding the conduct of field trials on lands acquired, developed and /or managed with Federal Aid funds.

Approval of specific field trial plans that document the inter-relationship between the existing federal aid project(s) and the proposed field trials has never been included in grant documentation and approved by the Fish and Wildlife Service. The DNR has never provided a detailed description of the field trials that are proposed at any given site in any

given year such as the number of participants, number of horses, number of dogs, number of vehicles, entry fees required, awards & prizes, program income, time frames, duration, and the expected intensity and significance of impacts in relation to their proposed annual work plan and ability to accomplish project objectives. Also, compliance has not been achieved with the National Environmental Policy Act, the Endangered Species Act, the National Historic Preservation Act, or any other ancillary compliance requirements to which the Federal Aid Programs are subject.

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Thus, in regard to the above finding, the Fish and Wildlife Service and the State are not in compliance with Sections 1, 2 and 6 of the Wildlife and Sport Fish Restoration Acts, nor a wide range of ancillary compliance requirements.

## **Remedies for Continued Noncompliance**

Remedies for noncompliance are identified in 43 CFR 12.83 (a).

“If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the grantee or more severe enforcement action by the awarding agency,
2. Disallow all or part of the cost of the activity or action not in compliance,
3. Wholly or partly suspend or terminate the current award for the grantee’s program,
4. Withhold further awards for the program, or
5. Take other remedies that may be legally available.”

Remedies for noncompliance are also identified in 50 CFR 80.21.

“The State must agree to and certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal

funds under the Acts. The Secretary shall have the right to review or inspect for compliance at any time. Upon determination of noncompliance, the Secretary may terminate or suspend those projects in noncompliance, or may declare the State ineligible for further participation in program benefits until compliance is achieved.”

These findings of noncompliance compel the Fish and Wildlife Service as the Federal granting agency to require the grantee, the Indiana DNR, to resolve the findings in an expedient manner. Continued noncompliance would result in the Indiana DNR becoming ineligible to participate in the Federal Aid in Wildlife Restoration Program and the Federal Aid in Sport Fish Restoration Program. At a minimum, this would mean that reimbursement for existing grants and approval of new grants and grant amendments would be discontinued. This would result in loss of annual funding that has ranged from \$5.3 to \$6.8 million dollars over the last three fiscal years.

The awarding agency must provide the grantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee is entitled under any statute or regulation applicable to the action involved per 43 CFR 12.83 (b). Under the program regulations, 50 CFR 80.7 provides that any differences of opinion over the eligibility of proposed activities or differences arising over the conduct of work may be appealed to the Director. Final determination rests with the Secretary. However, this programmatic review has identified noncompliance with regard to activities that are not questions of eligibility of activities under a grant agreement or the conduct of work funded under an active grant agreement. Thus, the provisions for appeal provided under the program regulations are not applicable to the action involved.

## **Benefits of Audit Resolution and Corrective Actions**

1. Hunting opportunities for deer, dove, rabbit, squirrel, and other species will greatly increase as interference from field trial activity will cease.
2. Opportunities for wildlife viewing, shooting range use, and fishing will increase as interference from field trial activity would cease. Opportunities for environmental education will also increase.
3. Lands and support facilities will be converted from field trial uses to use that support accomplishment of grant objectives that benefit wildlife.
4. Trampling and denuding of ground cover vegetation along trails and other areas heavily used for horseback field trials will cease and these areas will be rehabilitated. Excessive soil erosion will be stopped as will the resulting adverse effects of turbidity, siltation, and sedimentation on streams and fishing lakes. Management practices designed to benefit field trials rather than wildlife will cease.
5. Wildlife species, both game and non-game, will benefit when interference from field trials

with life activities such as breeding, nesting, birthing, brooding, resting, and feeding is stopped.

6. Preferential treatment and exclusive use of facilities by field trial organizations to the exclusion of hunting groups, school groups, scouting groups, and others will cease.
7. Commercial use of lands acquired, developed, or managed with Federal Aid funds will cease.
8. The Fish and Wildlife Service and the Indiana DNR will achieve compliance with the Federal Aid in Wildlife Restoration Act, the Federal Aid in Sport Fish Restoration Act, Federal Aid Program Regulations, Grant Administration Regulations, Program Standards, Grant Documents, and Ancillary Compliance Requirements. This will ensure the States continued eligibility to participate in these programs and receive Federal Aid funds. It will also eliminate vulnerability to a lawsuit based on noncompliance, which will protect Indiana's funding from the two Federal Aid Programs. This funding has ranged from \$5.3 to \$6.8 million dollars over the last three fiscal years and is vital to management of fish and wildlife resources in the State of Indiana.

## **Conclusion**

The subject of field trials at DNR Fish and Wildlife Areas in Indiana is a controversial issue with documentation of problems going back 16 years. These problems were addressed during the audit of the Indiana DNR under the National Federal Aid Audit program. The outcome was to assign the Fish and Wildlife Service the responsibility to evaluate field trials on Fish and Wildlife Areas purchased, developed, and /or managed with Federal Aid funds; to detail the findings in a report; and to identify corrective actions. Given its overview responsibility for the Federal Aid Programs, the Fish and Wildlife Service was the appropriate agency to conduct this evaluation.

The legal basis for this review are the Federal Aid Acts, Federal Aid Program Regulations, Grant Administration Regulations, Program Standards, Grant documents, and Ancillary Compliance Requirements. Based on these documents, it was concluded that Federal Aid lands are available for some field trial use provided the proposed level of field trial activities passes through the legally required federal aid planning and approval process and the legally required compliance process.

While the legal authorities cited in Appendix 6 do not specifically address field trials, House and Senate reports for the recently approved Public Law 106-408, entitled "Fish and Wildlife Programs Improvement and National Refuge System Centennial Act of 2000," do provide some specific language on the subject of field trials. While these reports do not constitute law like the Acts themselves or have the effect of law like Program Regulations, they are nevertheless useful and helpful in regard to this issue.

The House report language includes the following passage.

“The Committee reiterates that the public uses and benefits arising from Pittman-Robertson Act projects and programs remain important. Just like wildlife dependent recreation is now a priority public use of National Wildlife Refuge system lands, similar activities including hunting, fishing, field trials with dogs, hunter education, and improvement of hunting skills on lands and interests acquired or administered with wildlife restoration funds are an important beneficial feature of the program. Guidance that sets clear and reasonable standards and recognizes the long and consistent uses of wildlife management areas for activities such as trialing may be useful.”

The Senate report contains more specific language, including the following passage.

“Concerns have been raised recently, however, that the Fish and Wildlife Service is considering prohibiting the use of Pittman-Robertson lands for field trials. Field trials are dog competitions in which tests and training or related activities are conducted to improve the hunting abilities of, and identify those superior representatives of, the hunting breeds, as well as the skills of hunters. Field trials are a legitimate use of Pittman-Robertson funded lands, provided that the field trials are not inconsistent with the objectives and purposes of the Act. Because wildlife conservation is the primary purpose of the Pittman-Robertson Act, only field trials that do not adversely affect wildlife or wildlife conservation objectives are viewed as an acceptable use of Pittman-Robertson acquired lands. A type of field trial not generally appropriate for lands acquired with Pittman-Robertson funds would be one that requires significant manipulation of terrain, landscape, or vegetation, or intensive site management. Intensive site management in this context would include regular mowing, permanent stables, dog kennels, equipment storage areas or other infrastructure onsite, which would degrade the value of the land as wildlife habitat. Additionally, field trials proposed to be conducted during nesting or breeding seasons of the wildlife species for which the land was acquired would not be appropriate. In contrast, field trials which require minimal manipulation of terrain, vegetation, or habitat would be appropriate if timed to avoid the breeding and nesting seasons of the species for which the land was acquired. Proposals for field trials which fall between these examples, or which would conflict with hunting seasons or other public uses, would require case-by-case evaluations and decisions.”

The corrective actions identified in this document in response to audit resolution will bring the Fish and Wildlife Service and the Indiana DNR into legal compliance with the Federal Aid Acts, Federal Aid Program Regulations, Grant Administration Regulations, Program Standards, Grant documents, and Ancillary Compliance Requirements. They will also be an effective mechanism for ensuring that Federal Aid acquired, developed, and /or managed lands are available for some field trial use that is consistent with the intent expressed in the House and Senate Reports for Public Law 106-408. The corrective actions identified in this document are very consistent with the specific field trial language contained in the Senate Report.

Despite provisions for ensuring that Federal Aid lands are available for some field trial use, future field trial use will have to comply with existing laws and regulations under which the Fish and

Wildlife Areas were purchased, developed, and / or managed. This will mean changes from how things have been done in the past. With these changes will come benefits as identified in the preceding section titled “Benefits of Audit Resolutions and Corrective Actions”. However, these changes will limit field trial use, and it is expected this will be very unpopular with some field trial organizations. However, the findings of noncompliance compel the Fish and Wildlife Service, as the Federal granting agency, to require the grantee (Indiana DNR) to resolve the findings by implementation of the corrective actions in an expedient manner.

**Submitted by:**

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